IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 28TH NOVEMBER 2007 / 7TH AGRAHAYANA 1929

WP(C).No. 34914 of 2007(F)

AS.50/2003 of SUB COURT, TIRUR
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PETITIONER:

BALAKRISHNAN, S/O.KIZHAKKEPPURACKAL
KARAPPAN @ APPUNNI, POST NEDUVA, TIRURANGADI TALUK
MALAPPURAM DISTRICT.

BY ADV. SRIC.M.MOHAMMED IQUABAL

RESPONDENTS:
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1. PALACKAL DEVAKI AMMA, KOTTOTH HOUSE,
POST NEDUVA, PUTHANPEEDIKA, CHITTAMANGALAM,
PARAPPANANGADI, PIN-676 303.

2. PALAKKAL PARVATHY AMMA,
D/O.PARU AMMA, -DO-, -DO-.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 28/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

W.P.(C)NO. 34914 OF 2007 - F

Dated this the 28th day of November, 2007.

JUDGMENT

This writ petition is preferred against the order of the Subordinate Judge, Tirur in I.A.No.2021/2007 in A.S.No.50/2003. It was an application filed for reference under Section 125(3) of the Kerala Land Reforms Act. The learned senior counsel very fairly submits that the question of reference under Section 125(3) may not loom large at the appellate stage and therefore, he agrees with the fact that reference cannot be done under Section 125(3) at that stage. But, the court below has considered the question of resjudicata etc in the matter and the learned counsel would submit that the said approach is incorrect in view of the Explanation IV of Section 2(25) of the Kerala Land Reforms Act, where the question of kudikidappu shall be considered at the time of delivery of possession of the property. There is some force in that submission.

Therefore, I direct the court below to hear the appeal and dispose of the matter taking into consideration all contentions including plea of resjudicata, entitlement of benefit of the

kudikidappu etc after hearing both sides. I make it clear that findings in its order will not preclude the court below from considering the matter afresh.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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